IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.Appeal No.446 of 1999

Date of decision:18th December, 2006

State of H.P. Appellant.

Versus

Kashvinder Pal and another Respondents.

Coram

The Hon'ble Mr. Justice V.K.Ahuja,J.

The Hon'ble Mr. Justice

Whether approved for reporting[1]*?*

For the appellant: **Mr.Ashutosh Burathoki, Additional Advocate General.**

For the respondent: **Mr.BS. Chauhan, Advocate for respondent No.1.**

Respondent No.2 Subhash dead.

V.K.Ahuja, J.

This is an appeal filed by the appellant – State of Himachal Pradesh against the judgment of the Court of learned JMIC(II), Shimla dated 27.5.1999 vide which all the three respondents therein, were acquitted of the charge framed against them under Sections 41 and 42 of the Indian Forest Act.

Briefly stated, the facts of the case are that on 12.10.1990 at about 4.00 P.M, H.C. Anant Ram alongwith H.C.Balak Ram was present in the area of Khel-Ka-Chaura in connection with the investigation of a case when the accused persons came in a Truck bearing registration No.HIU 4607. On suspicion, the truck was stopped and 91 scants of wood were recovered without any permit. The scants were taken in possession in the presence of four witnesses. A case

[1] Whether the reporters of Local Papers may be allowed to see the Judgment?

was registered and the challan was filed before the trial Court which tried the respondents resulting in their acquittal.

I have heard the learned Additional Advocate General for the appellant-State and Shri B.S.Chauhan, learned counsel for respondent No.1. The submissions made by the learned Additional Advocate General were that the prosecution case stands proved from the testimony of two police officials who have corroborated to some extent the statements made by all independent witnesses and findings to the contrary of the learned trial Court are liable to be reversed. On the other hand, the learned counsel for respondent No.1 supported the judgment of the learned trial Court for the reasons given therein. He submitted that even the statements of the police officials were not such, upon which the findings to the contrary could have been recorded by the learned trial Court and, therefore, the appeal deserves to be dismissed.

On a perusal of the record of the case, it is clear that the recovery memo. Ex.PW-1/A with regard to recovery of scants was prepared at the spot by HC Anant Ram and the witnesses to the recovery memo. were PWs Rup Lal and Mohan Lal. The said Anant Ram has been examined as PW-7 who stated that the vehicle was taken to Police Station and the scants were taken in possession in the presence of witnesses Rup Lal and Mohan Lal. He further stated that thereafter Pradhan Ramesh Panth was called, who also signed the recovery memo. He further stated that at that time Driver Kashvinder Pal and one Balram were in the vehicle. He further stated that during investigation, one Subhash Chand was arrested from whom the accused persons had purchased this wood. In cross-examination, he has clearly stated that at the spot, there were only two persons namely

Roop Lal and Mohan Lal and Ramesh Panth Pradhan had met them on way meaning thereby that these witnesses were not at the spot when the truck was intercepted and the wood was taken in possession. He has further stated that Mohan Lal and Rup Lal were engaged by him for loading the timber. His own statement was sufficient to prove that the recovery memo. was prepared at the spot and these witnesses had signed it later on.

Out of the four witnesses, three witnesses allegedly associated by the prosecution, were examined. Ramesh Panth was examined as PW-1 who has stated that he was Pardhan of the area, and the police had associated him for counting the wood. Recovery Memo. Ex. PW-1/A was prepared and he also signed the same. He also stated that apart from him, Rup Lal and Mohan Lal had also signed the same in his presence. He did not state that the wood was taken in possession in his presence or which of the accused persons were present there at that time. In cross-examination, he stated that when he reached the spot, truck was already there and there was no other vehicle there and the sleepers were being unloaded from the vehicle. He further stated that he is not aware of the number of sleepers and further stated that there was no person sitting in the vehicle.

PW-2 Mohan Lal had stated that nothing had happened in his presence and no wood was taken in possession. He was declared hostile and was subjected to cross-examination by the APP. He admitted the signatures on the recovery memo.

PW Rup Lal was given up by the prosecution having been won over by the accused. The only other relevant witness can be said to be PW-3 Head Constable Balak Ram, who was also present there at the time when 91 scants were taken possession being carried in the vehicle

without any permit. He stated that these four witnesses were present at the spot at that time, which is contrary to the statement of PW-7 Anant Ram referred to above. In cross-examination, he stated that all these witnesses were already present with them and two had met on way while Mohan Lal was associated later on. He also stated that recovery was made in presence of all these four witnesses. He nowhere stated that who was driver of the vehicle or who else was sitting in the truck alongwith driver and has not stated anything in regard to the accused persons or the part played by them. He stated that documents were prepared in his presence and he himself had taken them to the Police Station. This is the only evidence led by the prosecution.

From the above discussion, it is clear that there is nothing in the statement of the Investigating Officer or that of the other police officials present with him, which could prove the guilt of the accused persons beyond any reasonable doubt. The eye witnesses associated by the prosecution also did not support the case. Therefore, it is clear that the findings recorded by the learned trial court acquitting the accused do not suffer from any perversity so as to interfere with those findings. Thus, the appeal filed by the appellant is liable to be dismissed which is dismissed accordingly and the findings of the learned trial court are affirmed. Bail bonds furnished by the respondent are discharged.

18th December, 2006. (V.K.Ahuja).J.
(SDS)